IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 14 OF 1998

Shri Anant Naguesh N.S.
Bodke, major in age,
resident of House No.81,
Comba, Margao, Goa. ... Appellant

versus

1. Deputy Collector(DEV)
and Land Acquisition
Officer, Panaji.

2. Block Development Officer,
Bicholim, Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Miss S. Dessai, Advocate for the Appellant.

Mr. H. R. Bharne, Government Advocate for the Respondents.

CORAM : P. V. HARDAS, J.

DATE : 13TH FEBRUARY, 2004.

ORAL JUDGMENT

This Appeal has been filed by the Original Applicant in a reference under Section 18 of the Land

Acquisition Act, being aggrieved by the Judgment and Award passed by the learned Additional District Judge, Panaji, dated 30th September, 1997, in Land Acquisition Case No.7 of 1993, maintaining the compensation awarded by the Land Acquisition Officer.

2. The facts in brief as are necessary for the decision of this Appeal are stated hereunder:-

The State Government, by a Notification under Section 4(1) of the Land Acquisition Act, dated 16th January, 1987, acquired an area of 17,200 sq. meters of land at Harvalem-Virdi, within the jurisdiction of Village Panchayat of Sanquelim for development of a playground. The said land is part of survey number 24/22 belonging to the present Appellant and others. The Land Acquisition Officer had awarded compensation of Rs.8,38,823.90. The present Appellant being dissatisfied with the compensation filed an application for enhancement of the compensation at the rate of Rs.200/- per sq. meter. The Land Acquisition Officer, therefore, made a reference under Section 18 of the Land Acquisition Act. The learned Reference Court on the basis of the claim of the Appellant framed the following issues:-

1. Whether the applicant proves that the market value of land is Rs.200/- per square meter?

2. Whether the applicant proves that the value of trees was Rs.97,000/-?

3. Whether the applicant proves that he is entitled for Rs.40,000/- by way of compensation for the wall and well?

4. What relief? What Order?

3. The Appellant examined himself as A.W.1 and had stated that he had been awarded the compensation at the rate of Rs.25/- per sq. meter. He had also made a grievance that the area had not been correctly calculated and 25 sq. meters had been ignored. In support of his claim for enhancement of the compensation, the Appellant relied on a Sale Deed dated 27th March, 1986 at Exh.12 and on a Sale Deed dated 8th January, 1986 at Exh.13. The Appellant also placed on record an Agreement of Sale between him and one Diniz Lino Pereira for the sale of the property under acquisition. As per the said Agreement at Exh.14, the property was agreed to be sold at the rate of Rs.140/- per sq. meter. In the cross-examination, he has admitted that the acquired land is an agricultural land which was lying barren for about 20 years. He has also admitted that the plot covered by a Sale Deed at Exh.12 is situated at a distance of about 250 meters while the property covered by Sale Deed at Exh.18 is at a distance of 250 to 300 meters from the main Bicholim-Valpoi road. He has also agreed that the property covered by Sale

Deeds at Exhs.13 and 14 are more further to the Bicholim-Valpoi road than the acquired property. He has also admitted that the land covered by Sale Deeds at Exhs.12 and 13 are not similar to the acquired land but the acquired land is better than those lands.

4. The Appellant examined Uday R.Lawande as A.W.2. A.W.2, Uday R. Lawande, stated that his Company had purchased a plot of land in the year 1985, at Exh.A.W.2/A by paying the purchase price of Rs.1,00,000/-. The area of the plot purchased was 1167 sq. meters. He has stated that the acquired land is at a distance of 200 meters from the plot of land purchased by him. In the cross-examination, he has admitted that the vendors in respect of the purchase of the property by the Company are his parents. The Appellant also examined Sakaram Bende as A.W.3, an Architect who has proved his Valuation Report at Exh.AW3/A. In respect of Issue Nos.2 and 3, the learned Reference Court found that there was discrepancy and inconsistency in the testimony of the Appellant and the expert A.W.3, Sakaram Bende and, therefore, answered the issues in the negative. In respect of Issue No.1, the learned Trial Court did not rely upon the sale instances at Exhs.12 and 13 though, he observed that the sale instances are just above 200 meters from the acquired land on the ground that the witnesses had not been examined. In

respect of the Sale Deed at Exh.A.W.2/A, the learned Reference Court found that since the property had been purchased by A.W.2, Uday R. Lawande, on behalf of the Company from his own parents, the sale instance could not be taken as a comparable sale transaction for determining the acquired land. Similarly, the learned Reference Court also doubted the Sale at Exh.14 in respect of the acquired land where the purchaser had agreed to pay Rs.140/- per sq. meter to the Appellant on the ground that there was no cogent evidence in respect of the date of execution of the date of Agreement.

5. Mr. S. D. Lotlikar, learned Senior Counsel appearing on behalf of the Appellant has urged before me that the sale instances at Exhs.12 and 13 ought to have been taken into consideration by the learned Reference Court and their rejection on the ground of non examination of the witnesses is contrary now to the law laid down by the Apex Court. The sale instances admittedly, are in respect of sale of land which is at a distance of 250 meters from the acquired land. As per the Sale Deed at Exh.12, an area of 500 sq. meters was sold at the rate of Rs.60/- per sq. meter. The date of the Sale Deed is 27th March, 1986. By Sale Deed at Exh.13 dated 8th January, 1986, an area of 300 sq. meters was sold at the rate of Rs.45/- per sq. meter.

Admittedly, both the Sale Deeds are in respect of the area which is much smaller than the area of the acquired land. These sale instances, therefore, cannot be used as comparative sale instances for determination of the market value of the acquired land. A smaller area would obviously fetch a higher price whereas the larger area may not fetch that price. Therefore, according to me, the rate of Rs.60/- or Rs.45/- per meter cannot be implicitly applied as market value of the acquired land. However, in the face of these two sale instances, according to me, the rate of Rs.25/- per sq. meter as awarded by the Land Acquisition Officer is not a realistic assessment of the market value of the land since the market value of the acquired land, according to me, would be Rs.30/- per sq. meter. The finding of the learned Reference Court in respect of Issue No.1, therefore, deserves to be interfered with. The finding of the learned Reference Court in respect of Issue Nos.2 and 3 do not require to be interfered with.

6. In the result, therefore, this Appeal is partly allowed. The Judgment and Award of the learned Reference Court in so far as it dismisses the claim of the Appellant for enhancement of the compensation is set aside and it is held that the Appellant is entitled to enhance compensation at the rate of Rs.5/- per sq. meter. Since, there are other owners of the property

who have not filed any reference application, the enhancement is restricted to the proportionate compensation payable to the Appellant. The Appellant shall be entitled to interest on the additional compensation in terms of Section 23(1)(a) of the Land Acquisition Act. The Appellant shall be proportionately entitled to the additional solatium and the interest on solatium.

7. The Appeal is partly allowed on the terms indicated above with no order as to costs.

P. V. HARDAS, J.

RD.